

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ROBERT RICHARDS, et al.,

Plaintiff(s),

v.

JOHN IZBICKI, et al.,

Defendant(s).

Case No. 2:16-CV-346 JCM (PAL)

ORDER

Presently before the court is *pro se* plaintiffs Olga and Robert Richards's motion to dismiss this action without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1). (ECF No. 38). Defendant Ray Britain filed a response. (ECF No. 41).

Pursuant to Federal Rule of Civil Procedure 41(a)(1), a "plaintiff may dismiss an action without court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Rule 41(a)(1)(i) grants a plaintiff "an absolute right to dismiss without prejudice . . . and requires no action on the part of the court." *United States v. Real Prop. Located at 475 Martin Lane, Beverly Hills, CA*, 545 F.3d 1134, 1145 (9th Cir. 2008) (internal citation omitted).

While plaintiffs' request to voluntarily dismiss this action was styled as a motion, plaintiffs do not need a court order because defendants have not filed an answer or summary judgment motion. *See, e.g., Commercial Space Mgmt. Co. v. Boeing Co.*, 193 F.3d 1074, 1077 (9th Cir. 1999)

Britain argues that Rule 41(a)(2), which applies if a defendant has filed an answer or motion for summary judgment, provides the only vehicle for plaintiffs to move for a dismissal because Britain has a motion to dismiss (ECF No. 6) pending. (ECF No. 41). Britain maintains that the

1 motion to dismiss may be treated as a motion for summary judgment pursuant to the minute order
2 (ECF No. 26). (ECF No. 41).

3 The minute order notifies parties of Rule 12(b) and explains that a motion to dismiss may
4 be treated as a motion for summary judgment “if evidence is submitted with a motion to dismiss
5 and considered by the court.” (ECF No. 26). Here, neither side has submitted any evidence. Thus,
6 Britain’s motion to dismiss remains a motion to dismiss.

7 Accordingly,

8 IT IS HEREBY ORDERED that *pro se* plaintiffs Olga and Robert Richards’s complaint
9 (ECF No. 1) be, and the same hereby is, DISMISSED without prejudice with respect to all
10 defendants.

11 IT IS FURTHER ORDERED that defendant Ray Britain’s motion to dismiss (ECF No. 6)
12 be, and the same hereby is, DISMISSED as moot.

13 IT IS FURTHER ORDERED that defendant Ray Britain’s *ex parte* motion (ECF No. 33)
14 be, and the same hereby is, DISMISSED as moot.

15 IT IS FURTHER ORDERED that the motion to dismiss filed by defendants Lisa Dernbach,
16 Anne Holden, Laury Kemper, and Patty Kouyoumdjian (ECF No. 24) be, and the same hereby is,
17 DISMISSED as moot.

18 IT IS FURTHER ORDERED that defendant John Izbicki’s motion to close case (ECF No.
19 45), motion to dismiss (ECF No. 46), and motion to stay discovery (ECF No. 47) be, and the same
20 hereby are, DISMISSED as moot.

21 The clerk shall enter judgment accordingly and close the case.

22 DATED September 9, 2016.

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UNITED STATES DISTRICT JUDGE